



Economic Affairs Interim

62nd Montana Legislature

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Draft for HB 525 Semifinal Report

Proposed Title: *Whose Interests Are At Stake?*

Public Boards for Private Means?

Or

Public Boards for Public Health, Safety, and Welfare?

Sections:

Introduction

1) Overview of HB 525 requirements -- The Narrow Sunset Review vs. Board Problems.

2) Private Payment (Board Fees) for Public Health, Safety, Welfare along with concerns about boards' indirect costs and board fees. Does private payment for regulation make sense or is it a trade-off for self-regulation?

3) Concerns about boards as indicated through the EAIC Survey or Committee meetings

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Summary to Date:

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Responses to questions posed for HB 525 reviews by all reviewed boards

Introduction

Implementation of House Bill No. 525, passed in the 2011 legislative session, resulted in a 2011-2012 review by the Economic Affairs Interim Committee of 16 of the 33 professional and occupational licensing boards. The remaining boards are to be reviewed, as indicated in HB 525, in the 2013-2014 interim. The legislation directed that the oldest boards be reviewed first.

The title of this report, albeit cynical, also implies that licensing boards can have many purposes. For the government to be involved, there generally is a perceived need to protect public health, welfare, or safety through restrictions on

professions and occupations. But boards also try to protect not only the public but licensees from competitors who do not agree to follow the rules, whether those rules require licensing itself or professional conduct.

HB 525 was intended to provide a legislative examination of boards to determine if they were serving a public interest and not just a private interest. The review also provided an opportunity for licensees and others to comment on problems that they saw with boards as well as to highlight board benefits.

In the 2011-2012 interim, as the Economic Affairs Interim Committee conducted the first half of its HB 525 reviews of licensing boards, only a few boards had "call-backs" to address concerns. Recurring complaints by two of the three professions on the Board of Dentistry ran through much of the interim. The financial troubles of the Board of Hearing Aid Dispensers brought that board back to the Committee more than once to determine how to deal with the loss of audiologists as licensees and the internal legal costs generated by frequent complaints against just a few of the dispenser licensees. Complaints regarding other boards generally involved competition concerns.

Some boards had few complaints and occasionally drew generous praise as many licensees (and others) took the time to answer an internet-based survey posted by the Economic Affairs Committee, with links from the licensing boards' websites. The Economic Affairs Committee appreciated the time spent by board members to address HB 525 questions and by concerned licensees and others involved with boards.

I. Overview of HB 525 requirements -- The Narrow Sunset Review vs. Board Problems.

The HB 525 review asked for a determination of whether a licensing board met requirements to protect public health and safety. The work plan for the HB 525 reviews also incorporated elements of SB 165, which was enacted in the 2011 session and sought to protect against enforcement of board standards or rules in a way that discriminates against licensees or that restrains trade or competition except when necessary to protect public health and safety.

If a board did not meet the criteria in Table 1, then the Economic Affairs Interim Committee (the Committee) was to determine whether to recommend to the full legislature that the board be terminated. The board's ability to remain solvent also was to be considered as part of the

recommendation¹ and each board review included data on the board's revenues and expenditures in the most recently available fiscal year.

Table 1: HB 525 criteria to determine if board meets a public purpose (37-1-142(2), MCA)

1. Does the unregulated practice of the occupation or profession create a direct, immediate hazard to the public health, safety, or welfare?
2. Is the scope of practice readily identifiable and distinguishable from the scope of practice of other professions and occupations?
3. Does the occupation or profession require a specialized skill or training for which nationally recognized standards of education and training exist?
4. Are qualifications for licensure justified?
5. Does licensure provide a public benefit?
6. Does licensure significantly increase the cost of service to the public?
7. Is there public support for licensure?

The Committee voted to recommend retention of all 16 of the licensing boards reviewed in 2011-2012. The overall support for retaining these licensing boards did not mean that the Committee endorsed all the operations of the boards, and in some cases committee members noted that licensing boards needed to work to address concerns of their licensees. Board problems presented before the Committee are addressed in Section III.

II) Private Payment (Board Fees) for Public Health, Safety, Welfare - does it make sense or is it a trade-off to allow self-regulation?

A frequently heard complaint among licensees and board members is that they have little control over board costs if they want to minimize these costs. Under 37-1-134, a board must set fees that are commensurate with costs (not set costs commensurate with fees). A budget brief prepared by Quinn Holzer, an analyst with the Legislative Fiscal Division, for the June 2011 Committee meeting described board budgets as "driven by two primary factors: 1) the number of licensees associated with the Board, and 2) the costs associated with the Board's administration."²

¹That language reads: 37-1-142(3) After a presentation and public comment during the review before the interim committee, the interim committee shall report to the legislature convening in the next odd-numbered year which boards, if any, fail to meet a majority of the criteria in subsection (2) and may recommend termination. The recommendation also must include information from the department regarding the board's ability to remain solvent or achieve fiscal solvency as provided in 37-1-101.

²The memo on board costs is available at:
<http://leg.mt.gov/content/Committees/Interim/2011-2012/Economic-Affairs/Meeting-Documents/June-2011/board-fee-process.pdf>.

Administrative costs consist of:

- direct operating expenses of the boards;
- direct hours for staff directly working on a board's activities;
- a combination of indirect hours for activities not specifically attributable to a single board and for activities of the Business Standards Division's bureau chiefs and administration-level positions (the costs for these indirect hours are assigned based on the total number of direct hours divided by the direct hours spent on a board. For example, if there were 10 boards and 100 hours spent on all boards, the percent charged to each board would not necessarily be 10% but rather a percentage based on the direct hours spent on each board.)
- indirect charges, which includes most legal work and a proportional charge for DLI's Central Services and the Commissioner's Office, plus phone lines, rent, and information technology services provided by the Department of Administration and information technology not directly associated with the Business Standards Division. The indirect charges all have similar allocations spread across all boards, programs, and other DLI divisions.

While all the boards are attached for "administrative purposes" to DLI, as provided in 2-15-121, MCA, the result of statutory changes over the years has been to assign duties to the department for which boards must pay. The department tells boards what these administrative costs are and attempts to treat all boards equally in terms of staffing and cost-sharing. For example, all boards have at least two attorneys, with one as board counsel and another who acts as a prosecuting attorney. A board may or may not need the prosecuting attorney (depending on the amount of complaints filed), but the department assigns a prosecuting attorney to make sure there is no conflict of interest for the board counsel. One attorney on staff may be a counsel for several boards but serve as a prosecuting attorney for two other boards.

The number of a board's licensees drive up costs for licensing and, depending on statutory licensing requirements, for compliance costs. Board decisions can increase some of the costs based on budgetary authority. For large boards, such as the Board of Nursing with more than 18,000 licensees, annual budgets may run close to \$1 million. For smaller boards with few complaints, like the Board of Optometry with fewer than 300 licensees, the annual budget might run less than \$27,000. For boards just starting up, DLI has estimated initial costs of \$40,000, which also is a median estimate of board costs.

Costs that boards can determine themselves, for example, may include how many meetings to have by phone, whether to meet at locations other than Helena (which increases staff costs for attending), and whether to pay for board members to attend conferences around the country (or even outside the country). Board members are appointed by the governor. The current governor's website (http://governor.mt.gov/boards_councils/default.asp) has an application for interested persons to send in their name. Public members also may be appointed.

During a 2005-2006 examination of licensing boards under Senate Joint Resolution No. 35, a question was asked: if a licensing board truly is needed for public health, safety, and welfare then should the licensees pay for that board or should the state? The current process in which the licensees themselves pay for the board, determine costs beyond the administrative costs, and regulate their competitors is part of an agreement by which, for self-regulation, the licensees pay the costs themselves.

In terms of alternative approaches to licensing boards, most of the board members who responded to questions asked by the Committee (Does the profession or occupation have one or more associations that could provide oversight without the need for a licensing board? and Why not use the association as the oversight body?) said that associations for the most part are there to lobby, boost the profession, and not necessarily to monitor bad actors. In response to another question (What are the benefits of a board being part of the licensing, and discipline process, instead of the department handling one or both?) most responses indicated that the knowledge of a profession or occupation was important to knowing whether someone had transgressed ethical or professional standards. If there were no boards, professionals would need to be brought in to help adjudicate, probably at higher cost for missing a day of work.

As one way of smoothing the department's administrative role, the Business Standards Division spent much of the 2011-2012 biennium providing a plan to reorganize administrative functions. This was intended to flatten out the previous silos in which each board may have had staff carrying out functions identical to functions handled by other boards. Although some boards voiced concerns that they were losing staff with specialized knowledge, the department pointed out that the revised structure would provide cross-training (to avoid stalled licensing or investigations if the assigned personnel called in sick) while retaining the specialized knowledge and encouraging greater sharing with other staff members.

The reorganization also resulted in three bureau chiefs instead of two with a new bureau chief replacing a position that formerly had been a deputy administrator. The department-drafted Figures 1 and 2 indicate the current functional organization, which in part was suggested by a 2003-2004 legislative audit. Staffing levels and assignments may change, the department noted, as the boards gain experience under the revised plan.

III) Concerns about boards as indicated through the EAIC Survey or Committee meetings

Board problems heard at the Committee meetings

- Professions under the thumb of other professions on the same board³

³This concern included addressing issues raised in Senate Bill No. 165, enacted in the 2011 session, which included a prohibition on discrimination among licensees and restraint of trade by licensees over a trade or profession that is not licensed.

Denturists and dental hygienists told the Committee that they felt their professions were ignored by the dentists on the Board of Dentistry, who have 5 seats on the 10-member board with dental hygienists having 2 seats, public members having 2 seats, and denturists represented by one board member. Efforts to address the Board of Dentistry concerns became somewhat confused by the HB 525 process, which ultimately involved a vote whether to recommend to the full legislature to keep the board or to terminate it (not change it). Initially, Sen. Joe Balyeat asked at the Aug. 24, 2012, Committee meeting for a bill draft that would separate the Board of Dentistry into one dealing only with dentists and a second bill that provided for representation of dental hygienists and denturists. That bill draft, LCdent,⁴ was not voted on as a committee bill. It was intended, in part, to stimulate discussion about separating into two boards. Instead, at a second review of Board of Dentistry concerns at the Jan. 20, 2012, Committee meeting there was a discussion regarding proposals presented by the Board of Dentistry to have two subcommittees, one of dental hygienists and one of denturists. The subgroups and their associations both supported an idea by which a subcommittee's recommendation for their respective profession would become the standard unless overturned by a supermajority of the board. However, the Board of Dentistry itself recommended only subcommittees whose recommendations would be subject to a regular determination by the full board. The ensuing committee action involved a motion to endorse the Board of Dentistry as is, followed by a failed substitute motion to endorse the supermajority subcommittee approach. The Committee ultimately endorsed keeping the Board of Dentistry as is, for the purposes of the HB 525 review. However, Committee members asked the Board of Dentistry to continue to work with the dental hygienists and denturists. The Board of Dentistry chairman, Dr. Dale Chamberlain, provided a report at the Committee's last meeting.

- Crematory operators, some funeral directors, and a member of the public complained about how the Board of Funeral Service handled complaints. The Department of Labor and Industry has considered a bill draft for the 2013 session to generally revise Board of Funeral Service statutes but this is not yet on the list of governor-approved proposals.
- Hearing aid dispensers raised concerns about their fees more than doubling, in part because legislation in 2011 eliminated the need for roughly 30 audiologists to be doubly licensed as hearing aid dispensers. The remaining 70 or so licensees had to meet high legal fees that board members attributed to hearings generated by complaints against mostly the same few licensees. One proposal investigated by the Committee was to ask the Attorney General's Office of Consumer Protection how much help that office could be in pursuing violations that currently are brought before a screening panel and potentially adjudicated by the Board of

⁴See the draft at: <http://leg.mt.gov/content/Committees/Interim/2011-2012/Economic-Affairs/Assigned-Studies/HB525/LCdentBart.pdf>

Hearing Aid Dispensers. These tend to be consumer complaints regarding a hearing aid dispenser's failure to make good, as provided by law, on returned hearing aids.

- Plumbers and electricians told the Committee that they were frustrated that fines levied against unlicensed practitioners went into the general fund instead of to the respective boards, which could have used the fines to offset the costs of adjudication panels that heard the unlicensed practice complaints. Their comment was that the good practitioners were having to pay through their licensing fees for the cost of investigating unlicensed practitioners attempting to avoid licensure fees. The Department of Labor and Industry has proposed an agency bill that would allow for enforcement of unlicensed practice for not only the Board of Plumbing and the Electrical Board, but the Board of Realty Regulation as well.
- Social workers and professional counselors--among other licensees and members of the general public who complained about licensees--raised concerns about their board's investigation, screening, and adjudication process, which they said did not give them an opportunity to address the complaints.
- Conflicts of interest in screening panels. Boards generally have different board members sit on the screening panel to determine if a complaint is worth sending before an adjudication panel of peers for censure of some type. Small boards may have a board member who is the actual subject of the complaint, which is a situation described by one member of the public who complained about a funeral director who is on the Board of Funeral Service.

Board problems aired through the survey process or otherwise fielded by the Committee

- **Lack of due process in screening and adjudication**

Licensing boards often are considered to provide a process for constructive criticism, monitoring the profession and keeping the practitioners from a bad reputation caused by bad actors in their midst. Sometimes that process also is considered a cheaper alternative than going to court to protect the public health, safety, and welfare -- particularly on the part of the accused practitioner. However, if the screening panels or adjudication panels of the licensing board do not display neutrality and an accused practitioner feels that the screening or adjudication was unfair, the process ends up adding a step to a costly litigation process rather than preventing litigation. According to department officials, the screening process is not intended to be a hearing with both sides given equal treatment; rather the process is designed to filter out serious complaints from those that do not have a basis in law, which is the only basis on which the board can take action.

- **Lack of enforcement**

This complaint surfaced from many licensees. The problem is not only of licensure but of regulation. One alarm installer said he could operate outside the bounds of licensure until

someone "tattled" on him because there are no inspectors to determine if he has done the installation correctly and no way for anyone to know whether he is working unless there are required permits or inspectors.

This complaint was raised not only by licensees but by those who otherwise might engage in unlicensed practice. If a licensing board does not have anything more than moral suasion and the threat of an injunction that may or may not be carried out, then what is the purpose of being licensed if a person does not need a license for insurance or other reasons?

- **Unclear recognition of reciprocity, particularly of health care professionals licensed in other states who still must fill out complete forms in Montana for licensure**

As voiced to the Select Committee on Efficiency in Government, there was a suggestion to allow a broad policy of reciprocity to recognize health care professionals who are licensed in neighboring states. Health care representatives have suggested that Montana health care licensing boards should recognize licenses issued in other states and allow those licensed professionals to practice in Montana without obtaining a license from a Montana licensing board. This change would require the drafting of legislation.

Stakeholders say reciprocity would allow Montana to better compete with other states in hiring health care professionals, reduce delays in hiring, and reduce administrative hurdles for health care facilities.⁵ Existing law (37-1-304, MCA) provides for reciprocity but in a permissive manner.

37-1-304. Licensure of out-of-state applicants -- reciprocity. (1) A board may issue a license to practice without examination to a person licensed in another state if the board determines that:

(a) the other state's license standards at the time of application to this state are substantially equivalent to or greater than the standards in this state; and

(b) there is no reason to deny the license under the laws of this state governing the profession or occupation.

(2) The license may be issued if the applicant affirms or states in the application that the applicant has requested verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment. If the board or its screening panel finds reasonable cause to believe that the applicant falsely affirmed or stated that the applicant has requested verification from the other state or states, the board may summarily suspend the license pending further action to discipline or revoke the license.

(3) This section does not prevent a board from entering into a reciprocity agreement with the licensing authority of another state or jurisdiction. The agreement may not permit out-of-state

⁵<http://leg.mt.gov/content/Committees/Interim/2011-2012/Efficiency-in-Government/Topic-Areas/Medicaid/jan2012-nonmedicaid-ideas.pdf>

licensees to obtain a license by reciprocity within this state if the license applicant has not met standards that are substantially equivalent to or greater than the standards required in this state as determined by the board on a case-by-case basis.

The Committee took up this issue as related to the Board of Medical Examiners' licensing process and heard both in June 2012 and September 2012 from the stakeholders and members of the Board of Medical Examiners regarding rationale and processes.

- **A concern that all boards are treated the same by the division when not all problems are the same (uniformity vs. particularity).** (more information from the survey will be included here)

IV. Other Areas for Improvement

Table 2: Other Areas for Boards to Consider for Improved Operations

Concern	Discussion	Possible Solutions
1) Board meetings are recorded and when the minutes are approved by the board, the recorded minutes are destroyed, leaving no way to dispute the approved minutes.	Some members of the public have said that the approved minutes contain false information. But they have no way to prove this against the audio recording.	1) Require board recordings to be retained for 30 days after the board has approved the minutes. This would not require much storage. The state's record retention law calls for 3 years, unless otherwise provided.

Other???

Summary

The Committee has recommended retaining all licensing boards reviewed in the 2011-2012 interim. These include the boards listed in Table 3.

Table 3: HB 525 Reviews of Licensing Boards Reviewed 2011-2012

Licensing Board	Review Date	Decision
Chiropractors	Aug. 24, 2011	continue as is
Dentistry	Aug. 23, 2011 Jan. 20, 2012	review again in January 2012 with proposal to split boards January vote: continue as is, endorse committees of denturists/dental hygienists; try to resolve problems among practitioners

Electrical	April 20, 2012	continue as is
Professional Engineers and Professional Land Surveyors	April 20, 2012	continue as is
Funeral Service	Oct. 6, 2011 Jan. 20, 2012	decision postponed to January 2012 January vote: continue as is
Hearing Aid Dispensers	Oct. 5, 2011	decision postponed to April 2012 April vote: continue as is
Medical Examiners	Oct. 6, 2011	continue as is
Nursing	Jan. 20, 2012	continue as is
Nursing Home Administrators	Oct. 6, 2011	continue as is
Optometry	Jan. 20, 2012	continue as is
Outfitters	Jan. 19, 2012	continue as is
Pharmacy	Aug. 23, 2011	continue as is
Plumbers	April 20, 2012	continue as is
Psychologists	June 12, 2012	continue as is
Public Accountants	Jan. 19, 2012	continue as is
Veterinary Medicine	Aug. 24, 2011	continue as is

Scheduled for reviews in 2013-2014 are the Boards of: Alternative Health Care, Architects and Landscape Architects, Athletic Trainers, Barbers and Cosmetologists, Clinical Laboratory Science Practitioners, Occupational Therapy Practice, Physical Therapy Examiners, Private Alternative Adolescent Residential or Outdoor Programs, Private Security, Radiologic Technologists, Real Estate Appraisers, Realty Regulation, Respiratory Care Practitioners, Sanitarians, Social Workers/Professional Counselors, Massage Therapists, and Speech Language Pathologists and Audiologists.

After the remaining boards are reviewed in the 2013-2014 interim, all the boards are to undergo another set of sunset reviews again lasting two interims. Complaints raised about the process used in this interim included:

- Requiring a representative of the board at each review. While the study plan indicated a representative of the profession or occupation and of the board needed to be at each review to explain how the board operates and issues of concern to the profession or occupation, in some cases boards decided to send more than one representative. This was a cost to the board and in many cases to the board member who had to give up income for the time spent traveling to and from the meeting and sometimes for a very brief presentation to the Committee.
- Limiting the time before the Committee to only those boards that have numerous complaints, critical survey responses, or an indication of fiscal problems. This still would require all boards to answer the questions distributed by the Committee but would limit both board members' time and Committee time to only boards with perceived problems.

Another option for the Committee to consider is whether to terminate the process for board review earlier than 2018. LCbrds is a short bill draft that would terminate the process after the review in 2013-2014 of the last set of boards.

Appendices not yet complete. Initial samples included.

Appendix A

Licensing boards' responses to questions posed by the Economic Affairs Committee for HB 525 reviews:

Question	<i>State Electrical Board</i>
1: What is the public health, safety, or welfare rationale for licensing and regulating your profession or occupation?	<p>Being a licensed electrician implies that the person has all certificates and licenses, as well as all the education and training, needed to perform aspects of wiring for, installing, and repairing electrical apparatuses, including equipment for light, heat and power. Licensed electricians protect the health of Montanans by being statutorily subject to the National Electrical Code (NEC). Their work is inspected for safety against poor installations that could cause house or building fires. Without the proper education and technical knowledge to understand the NEC, many homes and buildings would be improperly wired. Structures require proper conduit and correct size wiring, along with the correct breaker size in order to insure the wires can transmit the correct voltage. If the wiring is not properly sized, connected, or run, the safety of the home owner or occupiers of the buildings will be jeopardized.</p>
	<p><i>Board of Plumbers</i></p>
	<p>A plumber is a craftsman who specializes in installing and maintaining systems used for water, sewage, drainage, and piping. A master plumber is a plumber who has demonstrated through testing and experience that he/she has truly mastered the profession. It takes 8 years before one can test for a master plumber license. The fact is that plumbers are the first line of defense in the fight against unsafe drinking water. You may have heard the slogan: "the plumber protects the health of the nation". This slogan refers to plumbers keeping your drinking water safe by preventing contamination from sewer and other wastes that may come in contact with potable/drinking water. For example, the Centers for Disease Control documented 57 waterborne disease outbreaks from 1981 to 1998, which resulted in over 9,700 cases of illnesses caused by water that was contaminated in the water distribution systems. It was estimated that over 50% of the contamination was due to cross connection and backflow issues, easily prevented through competent plumbing practices. In other words, sewer water and other contaminants can enter into the water supply without proper safeguards that licensed plumbers are able to provide. Fewer than 10,000 cases of waterborne illness in this great nation of 300 million is minimal, thanks to a competent plumbing industry. A know but infrequently mentioned fact is that the practical absence of Typhoid fever and Cholera in our country is thanks, largely, to the plumbing industry. In addition to protecting the water supply plumbers make sure that the drainage system has the proper traps and vents to keep harmful gases, bacteria and other bugs from climbing out of the sewer system and into our homes. In contrast, 7.5% of deaths in India are attributed to water and sanitation issues and the World Health Organization has said that the SARS epidemic in the Asian countries a couple of years ago causing hundreds of deaths was spread through inadequate plumbing.</p>
	<p><i>Board of Professional Engineers and Professional Land Surveyors</i></p>
	<p>Professional engineers have a direct and immediate impact on public health, safety and welfare as they are responsible for designing the physical components of Montana's infrastructure. Likewise, professional land surveyors directly impact the public as their measurements and analysis of the ever-changing landscape allow for safe and proper development of the state. Montana's roads, buildings, communications, etc., depend on the work of these professionals. Regulation of these professions is necessary to ensure that qualified individuals perform this work ethically in the state, protecting the people of Montana.</p>

	Board of Psychologists
	The regulation of psychologists through licensure serves the public interest by protecting society's most vulnerable individuals, including those who struggle against suicidal ideations, major depression, those about whom questions have been raised regarding competency in relation to parenting, the ability to stand trial for a crime, those who need to sort through some major decisions in their life, or to simply be able to prove that they should remain free from institutional commitment.
	more to come

<p>Question</p> <p>2: If your profession is not licensed, what public protection would be lost?</p>	State Electrical Board
	Without licensing and regulation, anyone could perform electrical installations in Montana. With the majority of the electrical installation performed within the walls of a home or building, the occupier of the structure would not be able to tell if the electrical installation was finished properly. If the work is not properly installed or inspected, the occupiers and future occupiers of the structure could be exposed to electrocution, electrical fires or malfunctioning of the electrical system.
	The lay person does not have adequate knowledge of proper construction, wire sizing, or voltage requirements. Exposure to faulty and improper wiring compromises the health, safety, and welfare of the citizens of Montana.
	Board of Plumbers
	Without licensing and regulation, anyone could perform plumbing in Montana. With the majority of the plumbing performed under the foundation of a home or building, the occupier of the structure would not be able to tell if the plumbing was done properly. If the work is not properly installed or inspected, the occupiers and future occupiers of the structure could be exposed to contaminated drinking water, wastewater, and sewer gas or mold.
	The lay person does not have adequate knowledge of proper construction, sizing, and venting of a plumbing system. Exposure to contaminated drinking water, wastewater, and sewer gas compromises the health, safety, and welfare of the citizens of Montana.
	Board of Professional Engineers and Professional Land Surveyors
	Without licensing and regulation of these professions, a great deal of public protection would be lost. Unqualified individuals would be designing structures and surveying properties that could lead to the collapse of a poorly designed building or to a boundary dispute between two property owners. The public would be unaware of any faults or mistakes in the work until it is too late.

	Board of Psychologists
	Licensure of psychologists is preceded by and premised upon high standards of education and lengthy periods of supervised experience. The failure to regulate those who would assume the role of psychologist would expose the public to a foreseeable and increased risk of harm from incompetence and malfeasance. Because licensed psychologists are entrusted with serving and evaluating many of the most vulnerable of our population, should licensure not be required of psychologists, it would be the emotional wellbeing and constitutional rights of the most vulnerable among us who would suffer a loss of protection. If a problem exists with a professional's treatment or actions, there would be no entity with the appropriate knowledge to review and adjudicate public complaints.

Question 3: If a license in necessary (for health, safety, or welfare), does the profession or occupation need a board for oversight? If yes, please explain why and describe the purpose of creating a board.	State Electrical Board
	Yes, a board is necessary for health, safety, and welfare. The board was created for the protection of the people of this state from the danger of electrically caused shocks, fires and explosions. Also, to protect property from the hazards of electrically caused fires and explosions and to establish a procedure for determining where and by whom electrical installations are to be made and to assure the public that the persons making electrical installations are qualified to do so.
	Board of Plumbers
	Yes, a board is necessary for health, safety, and welfare.
	Board of Professional Engineers and Professional Land Surveyors
	Yes. Because engineering and surveying require specific education and experience, individuals with the same education and experience are the ones qualified to assess the competency of those who want to perform those services in Montana. Without the board, there would be no monitoring of the profession to ensure quality work was being performed, and the public would have no means to protect themselves against individuals performing substandard work.
	Board of Psychologists
	Yes. A board is necessary to provide the expertise to evaluate initial licensure applicants (such as appropriate educational degree, exams administered and passed, and to ensure there are no discipline concerns) and continued monitoring of existing licensees through complaint review, continuing education requirements, etc. As required by law, the Board of Psychologists is comprised of practitioners from various areas of psychological practice (two in private practice, one in public health, one engaged in teaching of psychology) and two members must be from the general public who represent the perspective of consumers. The mix of talent on the board is the most appropriate method to deal with oversight issues.

Question 4: Does the board deal with unlicensed practice issues? If yes, what types of issues?	State Electrical Board
	<p>Yes, the board deals with unlicensed practice issues. This is a very important function of the board as unlicensed practice complaints make up a good portion of a typical board meeting's work.</p> <p>The board frequently investigates and reviews information regarding unlicensed practice. Many complaints regarding unlicensed practice are initiated by homeowners who recognize, after the work is done, that the work is substandard, inefficient, or even dangerous. For example, the board has sought injunctions against people who refused to stop electrical installations without a license and whose work electrocuted a person or resulted in damage to the home. It is not uncommon for the complaining party to describe the cost involved in repairing the substandard work the unlicensed person did, ironically to save the cost of hiring a licensed person.</p>
	Board of Plumbers
	<p>Yes, the board deals with unlicensed practice issues. This is a very important function of the board as unlicensed practice complaints make up a good portion of a typical board meeting's work.</p> <p>The board frequently investigates and reviews information regarding unlicensed practice. Many complaints regarding unlicensed practice are initiated by homeowners who recognize, after the work is done, that the work is substandard, inefficient, or even dangerous. For example, the board has sought injunctions against people who refused to stop plumbing without a license and whose work has made families ill or resulted in damage to the home. It is not uncommon for the complaining party to describe the cost involved in repairing the substandard work the unlicensed person did, ironically to save the cost of hiring a licensed person.</p>
	Board of Professional Engineers and Professional Land Surveyors
	<p>Yes. The handling of unlicensed practice is a critical function of the board. The licensure process ensures that professional engineers and professional land surveyors complete the proper education, experience, and examinations to perform these vitally important services in Montana.</p> <p>The board reviews a wide range of unlicensed practice complaints. Some unlicensed practice complaints involve the improper use of the title "professional engineer" or "professional land surveyor", which misleads the public to believe a person has met the stringent qualifications for licensure when, in fact, the person has not. The board also deals with more substantive unlicensed practice issues such as the possible practice of engineering by architects as well as the blatant practice of engineering or surveying by an unlicensed individual.</p>
	Board of Psychologists

	Occasionally, the board is alerted to the conduct of individuals who portray themselves as having appropriate education and training to address or handle issues for which they are not qualified. A great deal of personal harm may result to individuals as a result of erroneous conclusions from psychological evaluations (e.g. confinement, parenting plan recommendations, competency to stand trial) and a court's reliance upon individuals claiming to be an expert in the field of psychology is often at the root of such problems.

Question: 5. People who are not licensed but are qualified in an occupation or profession may feel that a licensing board is preventing them from earning a living. What is your response?	State Electrical Board
	<p>The training, education, and supervised experience currently required of individuals to qualify for licensure as an electrician is necessary to help ensure each person will be capable of providing services that meet building code safety and efficiency requirements. Licensure represents a necessary barrier to entering this profession to allow the public a certain measure of protection and confidence that the person being hired is capable.</p> <p>The board does not discriminate with regards to who may submit an application. Staff for the board will review all applications submitted.</p> <p>Assuming an individual comes from a jurisdiction in which electrical licensure is not required, staff or the board will review all the experience an applicant submits. If the applicant's experience meets the established criteria, was legally obtained, and is verifiable, either the staff or the board will approve the applicant to sit for the examination. Upon passage of the exam, the applicant will be licensed.</p>
	Board of Plumbers
	<p>The training, education, and supervised experience currently required of individuals to qualify for licensure as a plumber is necessary to help ensure each person will be capable of providing services that meet building code safety and efficiency requirements. Licensure represents a necessary barrier to entering this profession to allow the public a certain measure of protection and confidence that the person being hired is capable.</p> <p>The board does not discriminate with regards to who may submit an application. Staff for the board will review all applications submitted.</p> <p>Assuming an individual comes from a jurisdiction in which plumbing licensure is not required, staff or the board will review all the experience an applicant submits. If the applicant's experience meets the established criteria, was legally obtained, and is verifiable, either the staff or the board will approve the applicant to sit for the examination. Upon passage of the exam, the applicant will be licensed.</p>
	Board of Professional Engineers and Professional Land Surveyors

	<p>If an individual can provide sufficient proof he or she is qualified, the board will review the individual's application. There are four sets of qualifications for licensure for both professional engineers and professional land surveyors that require different combinations of education and experience. These different combinations of education and experience allow for qualified individuals from a number of backgrounds to apply to sit for the national exam or to apply for a license if the individual is licensed in another state.</p>
	<p><i>Board of Psychologists</i></p>
	<p>The safe and competent practice of psychology requires a doctoral level of education, training, and two years of professional supervised experience. To ensure the proper and necessary preparation, the law currently requires reasonable standards that do not unfairly bar any individual from earning a living.</p>

Question:	<i>State Electrical Board</i>
6. How does your board monitor bias among board members toward a particular licensee, an applicant or a respondent (to unlicensed practice)? and	<p>The Montana State Electrical Board consists of a five-member board appointed by the Governor with the consent of the senate, including two master electricians, one journeyman electrician, and two public members. The diversity of the board helps serve to reduce the chances that any particular board member's bias will affect how the board carries out its business. The board members understand the responsibility that comes with their appointments and the impact of their decisions. If a member determines that they may have a conflict of interest, they will immediately recuse themselves and abstain from discussion involving an applicant, agenda topic or complaint.</p> <p>The board only licenses a single profession; therefore, bias towards another profession or occupation is not an issue.</p>
How does your board monitor bias toward a particular profession or occupation, if more than one profession or occupation is licensed by the board?	<i>Board of Plumbers</i> <p>The Board of Plumbers consists of a nine-member board appointed by the Governor with the consent of the senate, including two master plumbers, two journeyman plumbers, one registered professional engineer, three representatives of the public and one representative of the Department of Environmental Quality who must have experience in the regulation of drinking water systems. The diversity of the board helps serve to reduce the chances that any particular board member's bias will affect how the board carries out its business. The board members understand the responsibility that comes with their appointments and the impact of their decisions. If a member determines they may have a conflict of interest, they will immediately recuse themselves and abstain from discussion involving an applicant, agenda topic or complaint.</p> <p>The board only licenses a single profession; therefore, bias towards another profession or occupation is not an issue.</p>
	<i>Board of Professional Engineers and Professional Land Surveyors</i> <p>The members of the board understand the importance and integrity that falls upon them and the impact of their decisions. If a member determines he or she has a conflict of interest, the member will immediately abstain from the complaint or topic on the agenda.</p> <p>The board is made up of five professional engineers, two land surveyors, and two public members. The makeup of the board was determined by the number of licensees in each profession. While professional engineers make up a majority of the board, all members are willing to review matters relating to both professions. Engineering and surveying are related professions, so much so that a dual license exists for professional engineer surveyors. The public members serve important roles in preventing bias towards either profession because they offer outside, independent views.</p>

	Board of Psychologists
	Board member training provided by the Department of Labor and Industry addresses this issue; board members are advised of the need to recuse themselves from decision-making if a conflict exists. The presiding officer and staff also monitor bias on a case-by-case basis to help ensure that the possibility or perception of bias is avoided, and a carefully guarded and liberally administered public right of participation ensures a critical review of all such decisions. Also, having a mix of public and professional members who serve together on the board is another safeguard.
	There are no other professions licensed by this board.

Question: 7. Does the profession or occupation have one or more associations that could provide oversight without the need for a licensing board? Why not use the association as an oversight body?	State Electrical Board
	The State Electrical Board does not have an association that could provide oversight at this time. Montana does have electrical unions; however, the unions' primary loyalties are to their membership and profession, not to the health, safety, and welfare of the citizens of Montana.
	Board of Plumbers
	The Board of Plumbers does not have an association that could provide oversight at this time. Montana does have plumbing unions; however, the unions are not in a position to regulate the industry.
	Board of Professional Engineers and Professional Land Surveyors
	There is a Montana Society of Engineers (MSE) and a Montana Association of Registered Land Surveyors (MARLS). Both groups keep up with activities of the board, but the main goal of the associations is to promote their professions. They do not regulate the profession or handle complaints. They rely on the board to oversee the licensees and professions. Plus, membership in these associations is not required so many licensees would not fall under the purview of the associations' oversight.
	Board of Psychologists
	Associations have a certain degree of overlap in their respective purposes. However, professional associations consist of members of the profession who choose to join the associations. Generally speaking, the primary mission of an association is to promote an industry, while the primary mission of a regulatory board is to protect the public. These are not separate functions not well-suited to be performed by the same entity.

Question: 8. Is a licensing board needed in order for the practitioner to bill to receive insurance (for example, health insurance)? If so, is there an alternate method for billing that may be recognized rather than having a license or being regulated by a licensing board?	State Electrical Board
	The State Electrical Board does not facilitate the billing of insurance claims in the same manner as many of the licensed health care boards do.
	Board of Plumbers
	The Board of Plumbers does not facilitate the billing of insurance claims in the same manner as many of the licensed health care boards do.
	Board of Professional Engineers and Professional Land Surveyors
	The Board of Professional Engineers and Professional Land Surveyors does not oversee insurance requirements or billing regulations at this time.
	Board of Psychologists
	Yes, insurance companies are well aware of the advantage of a licensing board being able to determine the qualifications of practitioners, so licensure through an administrative agency is a prerequisite to insurance coverage for psychological services. The board is not aware of any alternative billing method.

Question: 9. What are the benefits of a board being part of the licensing and discipline process instead of the department handling one or both?	State Electrical Board
	Licensing and discipline processes frequently involve technical issues relative to electrical installations. The State Electrical Board is made up primarily of experienced and knowledgeable electricians and construction professionals. As such, the board members have a clear understanding of the qualifications of licensure and generally accepted standards of practice. Therefore, it is appropriate and wise for the board to determine that requirements of licensure and standards of care in their regulation of the electrical profession.
	Board of Plumbers
	Licensing and discipline processes frequently involve technical issues relative to plumbing. The Board of Plumbers is made up primarily of experienced and knowledgeable plumbers and construction professionals. As such, the board members have a clear understanding of the qualifications of licensure and generally accepted standards of practice. Therefore, it is appropriate and wise for the board to determine that requirements of licensure and standards of care in their regulation of the plumbing profession.

	Board of Professional Engineers and Professional Land Surveyors
	The board is made up primarily of experienced and licensed professional engineers and professional land surveyors. As such, board members have a clear understanding of the education, experience, and knowledge base needed to qualify as a professional in their respective areas of expertise. Therefore, it is appropriate and beneficial for the board to set the standards of licensing and professional practice and to enforce discipline when needed.
	One of the main responsibilities of the board is to review applications for licensure. Because the board members are licensed professionals, they have the expertise to review the experience portions of the application to determine competency whereas department staff lacks that expertise.
	As for discipline, the board understands the seriousness of violations in terms of poor design and surveys, and the board can better determine unlicensed practice based on its codes, laws, and rules.
	Board of Psychologists
	The board has the expertise of the psychologist members who understand the technical aspects of the profession and two public members to represent the consumer view. Both aspects are essential to effective regulation of the profession, and neither would be available to the department without the use of a board.

Question: 10. Is there an optimum ratio between licensees, board size, or public representation?	State Electrical Board
	The five-member State Electrical Board regulates a profession of approximately 5,000 licensed electricians and electrical contractors. The board has had no quorum issues regarding their 4 annual board meetings and the various panels and committees that are required to carry out the business of the board. Based on the work being accomplished, it appears that the current ratio between licensees, board size, and public representation is appropriate.
	Board of Plumbers
	The nine-member Board of Plumbers regulates a profession of approximately 1,400 plumbers. The board has had no quorum issues regarding their 4 annual board meetings and the various panels and committees that are required to carry out the business of the board. Based on the work being accomplished, it appears that the current ratio between licensees, board size, and public representation is appropriate.

	Board of Professional Engineers and Professional Land Surveyors
	Yes. The nine-member board relies on the knowledge of the public, those being protected, and the professionals, those doing the work, to make sound and fair decisions for license review and disciplinary processes.
	There are approximately 1,770 resident professional engineers in Montana; 3,300 nonresident professional engineers, 250 resident professional land surveyors, 185 nonresident professional land surveyors, 40 resident professional engineer surveyors, and nearly 20 nonresident professional engineer surveyors. The number of professional engineers and professional land surveyors on the board reflects the ratio of licensed professional engineers to licensed professional land surveyors in Montana.
	The mixture of professional engineers, professional land surveyors, and the public members provides for relevant discussions of the issues brought before the board.
	Board of Psychologists

Question: 11. If a board's purpose includes protecting public welfare, would that consumer protection be handled better by the Attorney General's office than by a board? (In other words, is there a value in a disinterested third party? If yes, why? If not, why not?) Who should be responsible for monitoring fraud within the profession or occupation?	State Electrical Board
	Regarding the specialized knowledge required to be an electrician, the board believes it is necessary for electricians and industry-related professionals to regulate other electricians. When circumstances dictate disciplinary action, the board members have the specialized knowledge required to fairly and impartially rule on the issues.
	Board of Plumbers
	Regarding the specialized knowledge required to be a plumber, the board believes it is necessary for plumbers and industry-related professionals to regulate other plumbers. When circumstances dictate disciplinary action, the board members have the specialized knowledge required to fairly and impartially rule on the issues.
	Board of Professional Engineers and Professional Land Surveyors
	With the specialized knowledge required for both professions, it is appropriate for the licensees themselves to regulate one another. When circumstances require disciplinary action, the board has confidence in both the compliance specialist assigned to it by the Business Standards Division and the legal staff who prosecute offenders before Department of Labor and Industry hearing examiners. The Attorney General's Office would need to hire a number of different professionals acquainted with engineering and surveying in order to provide protection for the people of Montana.
	Board of Psychologists

Question 12: If boards have overlapping scopes of practice, should there be a third-party to determine whether there is intrusion into the others' practice? If so, who should be the judge? If not, why not? Should each be allowed to operate on the other's turf without repercussions?

State Electrical Board

At times, the elevator, low-voltage technicians, well drillers, fire alarm installers and maintenance personnel have provided some feedback pertaining to the laws and rules of the State Electrical Board. Each time the board has been able to resolve the issues with little or no resistance. Each occupation normally understands the laws and rules of each other, thus there have been few if any practice issues between the occupations.

Board of Plumbers

The issue of overlapping scopes of practice has not arisen in relation to the Board of Plumbers.

Board of Professional Engineers and Professional Land Surveyors

Licensed professionals should not exceed their scope of practice. Such conduct is unprofessional and would be subject to discipline by the board that regulates that individual's practice. If the conduct entered into another board's area of professional expertise, then the second board would be justified in taking action for unlicensed practice. In many cases, the best course of action - and that recommended by the Board of Professional Engineers and Professional Land Surveyors - is for the individual to seek an additional license to avoid a scope of practice issue.

The board recognizes that issues such as scope of practice will arise occasionally. The board has found that when they do arise, we have been able to work cooperatively with other regulatory boards. We believe cooperation can resolve issues, and we have confidence in the strong working relationships among boards and staff within the Business Standards Division.

Board of Psychologists

Question 13: Should the board have the ability to limit use of certain terminology to only a licensee?

State Electrical Board - submitted by Jack Fisher, board president

Yes. The board should have the ability to limit use of certain terminology to only a licensee. When a person holds themselves out to be an electrician, the public assumes that the person is qualified to perform electrical installations. Licensure substantiates the fact that the individual has the education, training, and experience, verified by examination, to perform electrical work. Allowing unlicensed persons the ability to advertise or otherwise represent to the public their competence or ability in the electrical field would be misleading to the public.

Board of Plumbers - submitted by Tim Regan, chair of the board

Yes. The board should have the ability to limit use of certain terminology to only a licensee. When a person holds themselves out to be a plumber, the public assumes that the person is qualified to perform plumbing. Licensure substantiates the fact that the individual has the education, training, and experience, verified by examination, to perform plumbing. Allowing unlicensed persons the ability to advertise or otherwise represent to the public their competence or ability in the field of plumbing would be misleading to the public.

Board of Professional Engineers and Professional Land Surveyors - submitted by David Elias, presiding officer of the board

The board does not limit the use of the word engineer or surveyor. However, the distinction of being called a professional engineer or a professional land surveyor is a distinction the board protects. These titles convey to the public that the individual has met certain rigorous standards and that the individual is qualified to offer services in Montana.

Board of Psychologists

Board of Private Alternative Adolescent Residential or Outdoor Programs	TBD		
Board of Private Security	TBD	59	
Board of Occupational Therapy Practice	TBD	23	
Board of Radiologic Technologists	TBD	21	
Board of Real Estate Appraisers	TBD	33	
Board of Realty Regulation	TBD	128	
Board of Respiratory Care Practitioners	TBD	22	
Board of Sanitarians	TBD	114	
Board of Social Work Examiners & Professional Counselors	TBD	107	
Board of Speech Language Pathologists & Audiologists	TBD	16	
No board but with comments on boards			

*The following boards were reconsidered at additional meetings: the Board of Dentistry (Jan. 20, 2012), the Board of Funeral Service (Jan. 20, 2012), and the Board of Hearing Aid Dispensers (April 20, 2012).